

No. 9(1)81-8Lab/10041.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Asha Steel Industries, Plot No. 256, Sector 5, Faridabad :—

IN THE COURT OF SHRI HARI SINGH KAUHSIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 556 of 1980

between .

SHRI GOPI WORKMAN AND THE RESPONDENT-MANAGEMENT OF
ASHA STEEL INDUSTRIES, PLOT NO. 256, SECTOR-34, FARIDABAD

Present.—Shri Balbir Singh for the workman.
None for the respondent-management.

AWARD

This reference No. 556 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana, —vide his order No ID/FD/136-80/60077, dated 15th December, 1980 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Gopi workman and the respondent-management of M/s Asha Steel Industries, Plot No. 256 of 1980. Sector-24, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Gopi was justified and in order ?

If not, to what relief is he entitled ?

After this reference, the notices were sent to both the parties. Parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed :—

- (i) Whether the claimant workman resigned his job of his own ? If so, to what effect ? (O.P.M.)
- (ii) Whether the termination of service of the workman is proper justified and in order ? If not, to what relief is he entitled ?
- (iii) Relief ?

After framing the issues, the case was fixed for the evidence of the management for 15th April, 1981. On that day my learned predecessor was on leave so the case was adjourned to 28th May, 1981. I sent the notices to both the parties which were served for 30th July, 1981. On that day none was present from the management side. It is 10-30 a.m. The case was called thrice. In these circumstances I proceeded *ex parte* against the respondent-management and the case was fixed for the *ex parte* evidence of the workman for 7th August, 1981. On the previous date of hearing Shri Gulshan Kumar Partner and Shri Satish Ahuja were remained present, the Court's time was over so the proceeding adjourned to 12th August, 1981 for recording *ex parte* evidence of the workman. On that day the evidence of the workman was present which was recorded.

Shri Gopi workman himself appeared before this Court as witness as WW-1 and stated in his statement that he was working in the respondent firm as Chowkidar from two years and he used to get Rs. 240 per month as salary. He further stated that he had gone on leave from 7th June, 1980 to 11th June, 1980. After this he fell ill and remained under the treatment of E.S.I from 12th June, 1980 to 18th June, 1980. He further stated

that he had gone on duty with the fitness slip of the Doctor of E.S.I. then the respondent-management had not allowed to join the duty to him. After that he had gone to the respondent-management for duty but they had not given him the duty and in this way they had terminated my services. He further stated that at the time of termination the respondent-management had not paid him compensation for retrenchment and notice. He further stated that he had given a demand notice Ex. W-1 to the respondent-management and before this he had complained to the Labour Inspector which is Exhibit W-2. He produced Ex. W-3 regarding his illness and treatment. He further stated that conciliation proceedings were held. He produced the copy of proceedings which he had got from the Conciliation Officer which is Exhibit W-4. He further stated that he had never resigned from the services nor he had got the account. He further stated that he has never written application Mark 'A', and it does not bear his signature at circle 'B'. He produced Ex. W-5 which is a slip of fitness when he had gone to join his duty, and closed his case.

Keeping in view the circumstances of the case, I see no reason why the un rebutted statement of the workman given on oath should not be relied upon especially when the management chose not to appear and defend the reference before this Court. So, I relying upon the un-rebutted statement of the workman Shri Gopi as WW-1. I hold that the termination of the services of Shri Gopi was unjustified and not in order. He is entitled to be reinstated with full back wages. I answer the reference while returning the award in these terms.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Dated, the 20th August, 1981.

Endorsement No. 2595, dated 27th August, 1981

Forwarded four copies to the Commissioner & Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above-said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)81-8Lab./10042.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947(Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Davis and White India Private Limited, 15/3, Mathura Road, Faridabad :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 469 of 1980

between

SHRI JIYA LAL WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S
DAVIS AND WHITE INDIA PRIVATE LIMITED, 15/3, MATHURA ROAD,
FARIDABAD

Shri R.N. Roay for the workman.
Shri R.C. Sharma for the management.

AWARD

This reference No. 469 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/52939, dated 13th October, 1980 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Jiya Lal, workman and the respondent management of M/S Davis and White India Private Limited, 15/3, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Jiya Lal was justified and in order ?
If not, to what relief is he entitled ?

After receiving this reference notices were sent to the parties and the parties filed their pleadings. On the pleadings of the parties following issues were framed:—

- (i) Whether this reference is maintainable under the present form ? If so, to what effect ? (O.P.W.)
- (ii) Whether the resignation was taken under duress ? If so, to what effect ?
- (iii) Whether the termination of services of the workman is proper, justified and in order. If not to what relief is he entitled ?
- (iv) Relief.

According to the claim statement and rejoinder of the workman, the case is that the claimant Shri Jiya Lal was employed on 4th January, 1975 as a helper on the monthly wages of Rs. 274 per month. The claimant is a member of the Mercantile Employees' Association which is registered under trade union under the registration No. 379 of 1979. The services of the workman were terminated on 10th July, 1980 and on the same day the claimant sent his complaint to the union and gave the demand notice on the same day, stating that the resignation was taken under duress. On 9th July, 1980, the workman was given 20 pieces of ceiling rebets to clean. As bursh was not available, the workman kept these rebets in his pocket and went out side the factory. On the gate the watchman checked the workman and stopped him to go out side the factory. No charge sheet was issued to the workman. No enquiry was held. He was detained at the Security Officer and was teased for even three hours and got sign a letter of resignation and removed from the services. The Personnel Manager also threatened him to handed over to the police for alleged theft. The workman had neither any intention to resign nor he had any such work at his home. After this resignation, the workman approached the president of Mercantile Employee's Association who sent a demand notice on the same day. The respondent refused to take the workman on duty before Conciliation Officer. The respondent filed the written statement and objected this reference on the grounds that the Mercantile Employees Association has no following, neither the dispute was espoused by the workmen employed by the management so the dispute is not industrial dispute and this is a case of resignation. So this dispute do not fall within the definition of dispute. The reference is bad in law. They further stated in their written statement that when the workman submitted his resignation and it was accepted without any hesitation. There was no need of issue any charge sheet. The respondent management produced Ex. M-1 resignation of the claimant, Exhibit M-2, dated 2nd July, 1980 a letter of allegation which is sent by the claimant, Exhibit M-3, the reply of allegation, dated 4th July, 1980 and Exhibit M-4 the paper by which the claimant has admitted the allegations of theft and produced MW-1 Shri S.D. Sharma Security Officer and closed his evidence. The workman produced two witnesses Shri R.N. Roy representative as WW-1 and claimant himself as WW-2 and closed his evidence. My findings on issues are as under:—

Issue No. 1

Issue No. 1 is whether this reference is maintainable under the present form. The respondent management in his preliminary objection has objected that the reference is bad

in law. The workman's representative filed his rejoinder and in the rejoinder he has stated before introduction of Section 2-A of Industrial Disputes Act, 1947 the judicial opinion developed on the question of individual claims in the case of Central Provinces Transport Services Limited *versus* Raghunath Gopal Patwardhan (1957 I.L.L.J.-27), the Honourable Supreme Court observed:—

“The preponderance of judicial opinion is clear in favour of the view that an individual dispute cannot peruse be an industrial dispute but may become one if taken up by a trade union or a number of persons.”

This point has further been calified by the Supreme Court of India in the case of workmen *versus* Dharam Pal Prem Chand (Saughandi as appearing in 1965 I.L.L.J.-668), at 671 as under:—

“Having regard to this broad policy underlying the Act, this Court, and indeed a majority of industrial tribunals are inclined to take the view that notwithstanding the width of the words used by the Act in defining an “Industrial Dispute” it would be expedient to requires that a dispute raised by a dismissed employee cannot because an industrial dispute, unless it is supported either by his union or in the absence of a union, by a number of workmen.”

Obviously, the judicial opinion does not mean the substantial number of workmen and the union being the same.

Now with the introduction of section 2 “A in the Industrial Disputes Act, 1947 the definition of Industrial Dispute under Section 2(k) of the said Act has been clarified and widen by the legislature providing in the Act:—

“Where any employer discharge, dismisses, retrenches or otherwise termination the services of an individual workman any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute.”

And by the Division Bench of the Punjab High Court in the case of Algu Ram and State of Punjab & others as appearing in 1977-II-L.L.K.-Page 207:—

“Where in a dispute between an individual workman and his employer, a notice of demand was issued by the union, and not by the workman himself, such espousal by the union would make the dispute a collective one, but it does not merely on that account cease to be a dispute between the individual and his employers or take the dispute out of the purview of S. 2-A.”

Section 2-A was incorporated in the Act by the Parliament solely-with a view to modify the law established by the judicial decision holding that any industrial dispute which was either not sponsored by workman or espoused by a union of the workmen. Therefore, after the amendment an individual dispute of the nature specified can be subject matter of industrial dispute. The amended Section 2-A makes it clear that where any employer retrenches or otherwise terminates the services of an individual workman, any dispute or difference between and his employer connected with, or arising out of, such retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.”

Statement of WW-1 is that he is a president of Mercantile Union which is a registered trade union under registration No. 379, dated 22nd February, 1955 and Shri Jiya Lal is one member of the association since 10th July, 1980. A demand notice Ex. W-2 was served by me under my signature along with the complaint Ex. W-1. In his cross examination he has admitted that Ex. W-2 covered all the requirements of form 'F' and some additional informations. He has further stated that this workman authorised me for this dispute as under section 2-A of Industrial Disputes Act before sending the demand notice. The claimant stated in his statement as WW-2 that after this resignation he sent to trade union office at Delhi and told all these facts to Shri R.N. Roy to get my thumb impression on the papers. The representative of the respondent did not ask any question from the claimant regarding issue No. 1 and produced no documents to rebutt this issue. So this issue goes in favour of the workman against the respondent management.

Issue No. 2

Issue No. 2 is whether the resignation was taken under the duress, if so to what effect. On this issue the workman came as his own witness as WW-2 and stated that he had worked for 5 years in the respondent company and was getting Rs. 275 per month. On 4th July, 1980, he had given some pieces of rebets to clean which he could not clean at that time because brush was not available and put them into his pocket because they were small pieces and started other work and forgot about these pieces when he was going for a lunch then a watchman searched his pockets and got those pices from his pocket. It was all due to his forgetfulness. During this five years services there is no such complaint against him and on that allegation, the Security Officer made him sit on the gate office and from there the security officer took him to the and got his thumb impression. He further stated that he told that he had not stolen them but it was due to mistake. But they threatened him to sent the case to the police. Then they turned him out from the factory. He further stated that he reported for the duty on 10th July, 1980 in the morning but he was not allowed to enter the gate. He waited up to 4.00 p.m. Then he went to Delhi to his union office. In his cross examination he denied the signature on Ex. M-2. The respondent witness Shri H.D. Sharma as MW-1 has stated the case. The services of the claimant were terminated on 10th July, 1980 on the same day. The Union President sent a demand notice which is Ex. W-2 after the claimant has resigned himself as alleged by the respondent has mentioned in Ex. M-1. Then the claimant would not have come with a demand notice on the management which is shown that the resignation was taken under duress. The claimant has not submitted the resignation himself. For the above discussion this clear that the resignation was taken by the respondent under threat and so this issue also goes in favour of the workman and against the management.

Issue No. 3

Issue number three is as per reference. By discussing issue Nos. 1 and 2 every aspect of the case is clear that the management has received this resignation under duress and have thrown out the workman without any compensation notice and any relief. The claimant is admittedly an old workman in the factory, and there was no allegation on him in his previous services. The respondent have not alleged any such previous allegation on the claimant. It was small matter which can be on the basis of forgetfulness which he himself admits in his statement as WW-2 and in his claim statement. If there was no bad intention and it was case of theft then the claimant would have not admitted in the claim statement and in his own statement as witness. In my view the claimant has put the small pieces in his pocket and forgot them as he has stated in his statement that he has started the other work as burish was not available at that time. If there was any bad intention then he would not have gone out from the gate he can put these things anywhere. It was lunch time when this alleged theft was happened. If he had bad intention in his mind then he could have done it at the time of duty off. I believe the statement of the workman and hold that it was not such big allegation on which the permanent employee can be thrown out from the employment.

So the workman is entitled for his reinstatement with continuity of services and with full back wages. No order as to costs. This may be read an answer of this reference.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.

Dated the 20th August, 1981.

Endorsement No. 2596, dated the 27th August, 1981.

Forwarded (four Copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the abovesaid award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab/10043.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Janta Steel and Metal Co-operative Industrial Society Ltd., 14/7, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 101 of 1981

between

SHRI FATEH RAM, WORKMAN AND THE RESPONDENT-MANAGEMENT
OF M/S. JANTA STEEL AND METAL CO-OPERATIVE INDUSTRIAL
SOCIETY LTD., 14/7, MATHURA ROAD, FARIDABAD

Presents :—

Shri Yoginder Singh, for the workman.

None, for the respondent management.

AWARD

This reference No. 101 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/34-81/8978, dated 20th February, 1981 under section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Fateh Ram and the respondent-management of M/s Janta Steel and Metal Co-operative Industrial Society Ltd., 14/7, Mathura Road, Faridabad. The term of the reference was :—

“Whether the termination of services of Shri Fateh Ram was justified and in order? If not, to what relief is he entitled?”

After receiving this reference, notices were sent to both the parties which were served, for 1st April, 1981. On that day none was present from the management side. It was 1-30 P.M. The case was called thrice. My learned predecessor proceeded *ex parte* against the management and the case was fixed for the *ex parte* evidence of the workman for 7th April, 1981. On that day the *ex parte* evidence of the workman was present which was recorded. Shri Fateh Ram, workman himself appeared as witness as WW-1 and stated in his statement that he worked in the respondent company as maintenance fitter at the salary of Rs. 320 per month from 3rd April, 1979. He further stated that the respondent company had not given him any appointment letter and the respondent-management had closed my gate on 4th January, 1980 and on his protest the respondent-management had re-instated him on 9th January, 1980 and he had worked in the respondent-management upto 31st August, 1980 continuously. He further stated that the respondent-management had removed him from the services on 31st August, 1980 at 2.00 P.M. without giving any reason, notice or termination letter which is illegal. He further stated that he is still in un-employment and he has not got the employment anywhere. He further stated that he wants to work. He prayed that he may be re-instated with full back wages and continuity of service. He produced Exhibit W-1 which is a E.S.I. Card, and closed his case. Then the case was reserved for award. I sent a notice to the workman for 1st July, 1981 for further *ex parte* arguments which was heard.

Keeping in view the circumstances of the case, I see no reason why the unrebutted statement of the workman given on oath should not be relied upon especially when the management choose not to appear and defend the reference before this Court. So I relying upon the un-rebutted statement of the workman Shri Fateh Ram as WW-1. I hold that the termination of the services of Shri Fateh Ram was unjustified and was also not in order. He is entitled to be re-instated with full back wages. I answer the reference while returning the award in these terms.

Dated the 20th August, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endst. No. 2597, dated the 27th August, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)81-8Lab/10044.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Janta Steel and Metal Co-operative Industrial Society Ltd., 14/7, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 103 of 1981

between

SHRI LAKH RAJ WORKMAN AND THE RESPONDENT MANAGEMENT OF
M/S. JANTA STEEL AND METAL CO-OPERATIVE INDUSTRIAL SOCIETY
LTD., 14/7, MATHURA ROAD, FARIDABAD.

Shri Yoginder Singh, for the workman.

None, for the respondent-management.

AWARD

This reference No. 103 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/33/81/9365, dated 24th February, 1981 under 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Lakh Raj, workman and the respondent management of M/s. Janta Steel and Metal Co-operative Industrial Society Ltd., 14/7, Mathura Road, Faridabad. The term of the reference was :—

“Whether the termination of services of Shri Lakh Raj was justified and in order ?
If not, to what relief is he entitled ?”

After receiving this reference, notices were issued to both the parties for 1st April, 1981. On that day none was present from the management side. It was 1.30 P.M. The case was called thrice. My predecessor proceeded *ex parte* against the management and the case was fixed for the *ex parte* evidence of the workman for 7th April, 1981. On that day the *ex parte* evidence of the workman was present which was recorded. Shri Lakh Raj himself appeared as witness as WW-1 and stated in his statement that he worked in the respondent company as helper at the salary of Rs. 265 per month from 7th May, 1980. He further stated that the respondent company had not given him any appointment letter and the respondent management had removed him on 24th September, 1980 at about 2.30 p.m. without giving any notice and chargesheet. He further stated that his termination from services was illegal. He further stated that he is still in un-employment and he is ready to go his work. He requested that he may be reinstated with full back wages and with continuity of services. He produced Ex. W-1 which is a photostet copy of the attendance card and closed his case. Then the case was reserved for award. I sent a notice to the workmen for 3rd July, 1981 for further *ex parte* argument which was heard.

Keeping in view the circumstances of the case I see no reason why the un-rebutted statement of the workman given on oath should not be relied upon especially when the management choose not to appear and defend the reference before this Court. So, I relying upon the un-rebutted statement of the workman Shri Lakh Raj as WW-1, I hold that the termination of the services of Shri Lakh Raj was unjustified and was also not in order. He is entitled to be re-instated with full back wages. I answer thereference while returning the award in these terms.

The 20th August, 1981.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 2598, dated the 27th August, 1981.

Forwarded four copies to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.